



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM098Sep16

In the matter between:

KAP DIVERSIFIED INDUSTRIAL (PTY) LTD

Acquiring Firm

And

SAFRIPOL HOLDINGS (PTY) LTD

Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: AW Wessels (Tribunal Member)
Heard on	: 21 December 2016
Order Issued on	: 21 December 2016
Reasons Issued on	: 26 January 2017

Reasons for Decision

APPROVAL

- [1] On 21 December 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction involving KAP Diversified Industrial (Pty) Ltd ("KDI") and Safripol Holdings (Pty) Ltd ("Safripol Holdings").
- [2] The reasons for the approval follow.

PARTIES TO THE PROPOSED TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

- [3] The primary acquiring firm is KDI, a wholly owned subsidiary of KAP Industrial Holdings Limited ("KAP"), a public company listed on the Johannesburg Securities Exchange Limited. KAP's two primary shareholders are Steinhoff International ("Steinhoff") (43%) and Allen Gray Asset Management (21.97%).
- [4] KAP controls a number of firms. However, relevant to the competition assessment of the present matter are its operating divisions Hosaf (Pty) Ltd ("Hosaf") and Wood Chemicals SA ("Woodchem").
- [5] Hosaf produces polyethylene terephthalate resin (PET) which is used to manufacture plastic bottles for soft drinks and mineral water. Woodchem produces urea formaldehyde for the manufacture of chipboard and similar products.

Primary Target Firm

- [6] The primary target firm is Safripol Holdings, a firm incorporated in accordance with the company laws of the Republic of South Africa. Safripol Holdings is controlled by Rockwood Fund 1 (62.1%). Safripol Holdings has one wholly owned subsidiary, Safripol (Pty) Ltd ("Safripol").
- [7] Safripol is a producer of polymers, namely high density polyethylene ("HDPE") and polypropylene ("PP"). These polymers are used as raw materials to produce an extensive range of high volume plastic products, including bags, bottles, containers, crates, packaging and general household items.

PROPOSED TRANSACTION AND RATIONALE

- [8] The proposed transaction involves the acquisition by KDI of the entire shareholding in Safripol upon completion of the proposed transaction. Post transaction, KDI will thus exercise sole control over Safripol.

- [9] In terms of rationale, KAP submitted that the proposed transaction presents an opportunity to grow its business by investing in industry leading industrial assets that are complementary to its existing operations.
- [10] The sellers submitted that the transaction maximises value and creates liquidity.

IMPACT ON COMPETITION

- [11] The Competition Commission ("Commission") found that there is no horizontal overlap between the activities of the merging parties.
- [12] The Commission however noted that during its investigation it received concerns regarding the proposed transaction from certain customers of the merging parties.
- [13] A group of customers was concerned about potential post-merger unilateral price increases. The Commission however found that the proposed transaction was unlikely to result in unilateral price increases since the merging parties do not operate in similar or interchangeable markets. Further, the Commission pointed out that because there is no overlap in the merging parties' activities, there is no accretion in market shares as a result of the proposed transaction.
- [14] For the above reasons, the Commission concluded that the proposed transaction was unlikely to result in any unilateral effects. We concur with this finding.
- [15] The Commission further noted that another customer was concerned that the merged entity will engage in input foreclosure post-merger by supplying certain Steinhoff subsidiaries with the raw material HDPE. The Commission stated that although Steinhoff does not have a controlling shareholding in KAP, Mr Marcus Jooste, the Chief Executive Officer of Steinhoff, is a director

of Mayfair Speculators (Pty) Ltd which has a 42.15% shareholding in the Rare Group. The Rare Group is active in the manufacture of HDPE pipes and thus requires HDPE as a raw material.

- [16] The Commission was concerned that input foreclosure may result from the proposed transaction given that Safripol has market power as the sole producer of HDPE in South Africa. Although the Commission acknowledged that this market power exists pre-merger, it argued that the merged entity could have the incentive to foreclose the particular customer since KAP sells an insignificant portion of its HDPE to the customer in question. To address this concern the Commission proposed a three-year supply condition from Safripol to continue to supply HDPE to its customers.
- [17] The merging parties however objected to the Commission's proposed supply condition and argued that it was not warranted in this case. They argued that any potential post-merger foreclosure was unlikely since (i) it is not merger specific given that there is no change to the market for the supply of HDPE as a result of the proposed merger; (ii) HDPE imports are readily available to customers since 40% of the HDPE sold in South Africa is imported, free of tariffs or other regulations and at similar prices and quality as the HDPE that is produced in South Africa¹; and (iii) there is no incentive to foreclose any customer since the Commission's concern relates solely to Mr Marcus Jooste in his capacity as a director and a shareholder of Steinhoff and Steinhoff only has a non-controlling shareholding in the acquiring firm (see paragraph 15 above).
- [18] The Tribunal questioned the Commission and the merging parties regarding the market position of the Rare Group in the manufacture of HDPE pipes in South Africa. All indications were that the Rare Group is a small player in this market.² The Commission also describes the Rare Group as "*an insignificant customer*" of Safripol.³

¹ The Commission did not dispute these import data; see page 16 of the Commission's Report.

² Transcript, pages 9 and 10. Also see Table 1 of the Commission's Report.

³ Commission's Report, pages 15 and 16.

[19] Based on the information before us, we have found insufficient evidence that the proposed transaction will lead to any appreciable foreclosure concerns that would warrant approving the proposed transaction subject to a supply condition. We have accordingly approved the proposed transaction without conditions.

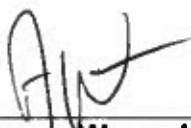
PUBLIC INTEREST

[20] The merging parties confirmed that the proposed transaction will not have a negative effect on employment in South Africa.⁴

[21] The proposed transaction further raises no other public interest concerns.

CONCLUSION

[22] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.



Mr Andreas Wessels

26 January 2017
Date

Mr Norman Manoim and Mrs Medi Mokuena concurring

Tribunal Case Manager: Alistair Dey-Van Heerden

For the Merging Parties: Johan Roodt of Roodt Incorporated

For the Commission: Relebohile Thabane

⁴ See Merger Record, pages 15 and 72.